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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Yvonne Gonzalez Rogers, Judge

IN RE TWITTER, INC. SECURITIES)
LITIGATION) NO. CV 19-07149-YGR
_____)

Oakland, California
Tuesday, November 10, 2020

TRANSCRIPT OF PROCEEDINGS VIA ZOOM

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Official Reporter

Tuesday - November 10, 2020

3:30 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil Action 19-7149, In re
Twitter, Inc. Securities Litigation.

Counsel, please state your appearances.

MS. WEINRIB: Tamar Weinrib from Pomerantz LLP on
behalf of Plaintiffs.

MR. CHOI: Mario Choi -- Kaplan, Fox & Kilsheimer --
on behalf of Plaintiffs.

MS. JOHNSON: Good afternoon. Michele Johnson, Latham
& Watkins, on behalf of Defendants.

MS. MATTIS: And Hilary Mattis of Latham & Watkins on
behalf of Defendants.

THE COURT: Good afternoon, everyone.

So we were trying lots of different things. Can you tell
me again who is arguing the case?

MS. WEINRIB: Your Honor, this is Tamar Weinrib. I
will be arguing on behalf of Plaintiffs.

THE COURT: Okay.

MS. JOHNSON: And I will be arguing on behalf of the
Defendants. This is Michele Johnson.

THE COURT: Okay. I am inclined to grant the
Defendant's motion, so we'll go ahead and start with you,
Ms. Weinrib.

1 **MS. WEINRIB:** Thank you, Your Honor.

2 Your Honor, Twitter is a company that earns most of its
3 revenue from advertising. In fact, in the last few years, it
4 earned approximately 86 percent of its revenue from
5 advertising, and over 90 percent of that came from
6 advertisements that targeted mobile users.

7 One significant driver of that revenue was their Mobile
8 Application Promotion product or as we refer to in shorthand,
9 MAP. Now, the way that MAP works is it targets mobile phone
10 users and gets them to either engage with or install an app,
11 and it only works if Twitter is able to harvest and provide its
12 users' non-public data to advertisers or measurement partners
13 so that those advertisers can then in turn send targeted ads to
14 the right users.

15 Now, this use of non-public data is important because
16 Twitter has also historically touted that it provided its users
17 control over their own data, so if a user wants to opt out of
18 Twitter's sharing its data, they have the option to do so. And
19 in fact there were privacy policies in place throughout the
20 class period stating as such, and Twitter was also beholding to
21 an FTC settlement entered in 2011 that barred Twitter for 20
22 years from misleading consumers regarding the extent to which
23 it protects their privacy and honors consumer's privacy
24 choices.

25 However, there were security -- there were software bugs

1 primarily impacting the MAP product, and due to those bugs,
2 Twitter was in fact harvesting and sharing users' confidential
3 data with advertisers even when those users had opted out of
4 having their data shared.

5 Now, Twitter couldn't fix the problem, so instead, they
6 turned off the sharing of user data altogether, which made it a
7 less valuable advertising medium to the advertisers. Without
8 that data, they couldn't effectively target the relevant
9 Twitter users. And this had an impact on revenue. Again,
10 advertising accounted for almost all of Twitter's revenue. And
11 it also caused Twitter to halt work that they had been -- that
12 they had told investors they were doing to improve MAP.

13 So what happened was that as a result of all of this,
14 Twitter's class period statements were rendered misleading.
15 There were a few different categories of misstatements.

16 **THE COURT:** Let's look at the statements specifically
17 because in all of these security cases, good or bad, the law
18 requires that I look specifically at the statement. So even if
19 you say everything that you say is true, it doesn't matter if I
20 can't -- if the statement itself is not something that the law
21 allows for in terms of an actionable statement under the PSLRA.

22 So we've got the statements from July 2019. And these are
23 in your Complaint, paragraphs 104 and 107; right? Are we all
24 on the same page?

25 **MS. WEINRIB:** Yes. Should I begin addressing them or

1 did you want to --

2 **THE COURT:** I mean, as I look at these statements,
3 they seem to be what we call legally puffery. Forward-looking,
4 they've got cautionary -- that set of statements -- I mean,
5 they're pretty generic.

6 **MS. WEINRIB:** Your Honor, the statements were not
7 generic or forward-looking, with all due respect. In those
8 statements, the --

9 **THE COURT:** You know, Ms.-- I'm going to stop you
10 right there. Just a little pointer.

11 **MS. WEINRIB:** Sure.

12 **THE COURT:** Never use the phrase "with all due
13 respect" in front of a judge. Just cut it out of your
14 advocacy. It basically -- it doesn't send the right signal.

15 Go ahead. I'm not going to hold it against you. I'm just
16 giving you a practice pointer. Don't say that. Go ahead.

17 **MS. WEINRIB:** Apologies.

18 Twitter conveyed to investors that they were working to
19 improve MAP and conveyed in those statements in particular that
20 that work was ongoing, that they were in the middle of that
21 work, and even went so far as to talk about revenue impact, but
22 those statements were misleading because they knew at the time
23 that because of the software bugs, they had to reallocate their
24 engineers to work on fixes to the software bugs rather than
25 working to improve MAP. So that --

1 **THE COURT:** What words are you focused on
2 specifically?

3 **MS. WEINRIB:** Words with regard to -- sorry,
4 Your Honor. Let me just go to the paragraph.

5 **THE COURT:** Let me go to Ms. Johnson.

6 What's wrong with those statements, or what's not
7 actionable about those statements?

8 **MS. JOHNSON:** Your Honor, the statements aren't
9 actionable because there are no allegations that contradict
10 them either at the time or at the end of the class period.
11 You're focusing on the statements starting with July 26th. We
12 are continuing our work to increase the stability, performance
13 and flexibility of our ad platforms not alleged to be false.

14 Increasing the stability, performance, and scale of our ad
15 platforms will take place over multiple quarters with a gradual
16 impact on revenue. The third statement on July 26th is
17 similar.

18 There is no alleged fact in the Complaint that contradicts
19 any of these statements. In fact, if you look at the end of
20 the class period, the statements made on October 24th, which is
21 the day after the end of the class period, mirror the
22 statements made at the beginning, and, in fact, revenue did
23 gradually increase.

24 **THE COURT:** Ms. Weinrib, response.

25 **MS. WEINRIB:** Your Honor, those statements were false

1 because they state that they were in the middle of work
2 improving MAP, "middle of work" or "continuing our work," and
3 the allegations in the Complaint are that they were not
4 continuing that work. They were not in the middle of that
5 work. They had halted that work altogether in order to focus
6 on the software bug that had caused that sharing of non-public
7 data that they had to deal with.

8 And so --

9 **THE COURT:** Ms. Johnson.

10 **MS. JOHNSON:** That is a conclusory statement. The
11 allegations say that Twitter re-purposed engineers for sure
12 when we would like them to be working on other things and they
13 had to address this bug, but in fact addressing the bug is
14 working on MAP. And nowhere did Twitter ever say that MAP
15 would proceed along a particular timeline, would be done at a
16 particular time.

17 It is only conclusory to say that work was halted rather
18 than engineers working on the bug fix, which is --

19 **THE COURT:** All right.

20 Ms. Weinrib.

21 **MS. WEINRIB:** Your Honor, the -- when they stated that
22 they were continuing their work, in the middle of their work,
23 they were talking specifically about improvements to MAP. They
24 weren't talking about the software bugs. And the indication of
25 that is very clear from the fact that they didn't even disclose

1 the bugs to the public until August 6th, so these statements
2 predate any talk about software bugs.

3 So read in context, when they're talking about being in
4 the middle of their work regarding MAP or continuing their
5 work, they are very specifically talking about improvements to
6 the MAP product.

7 **THE COURT:** Let's go to the next set. The next
8 statements from the Complaint at paragraph 109, these are the
9 Q2 2019 Form 10-Q risk statements.

10 Ms. Johnson.

11 **MS. JOHNSON:** Here, too, Your Honor, there are no
12 specific factual allegations that support that these could be
13 false. "We are continuing our work to increase the stability,
14 performance, and scale of our ad platforms in our mobile
15 application," etc. "Any positive remedy impact will be gradual
16 in its impact."

17 Nothing contradicts that they were continuing the work.
18 Nothing contradicts that they were working on stability,
19 performance and scale, and nothing contradicts that there, in
20 fact, was a positive revenue impact that was gradual at the end
21 of Q3, according to Plaintiffs' own allegations.

22 **THE COURT:** Ms. Weinrib.

23 **MS. WEINRIB:** Your Honor, the statements that
24 Ms. Johnson referenced are misleading for the exact reasons
25 that we stated previously, but the paragraph that Your Honor is

1 referring to contains risk disclosures that warn investors that
2 there may be software errors, and that statement in and of
3 itself is misleading because they knew at the time that there
4 were software errors. So warning of possibilities when
5 Defendants know that there actually are software errors at that
6 time is misleading in and of itself.

7 **THE COURT:** All right.

8 Ms. Johnson.

9 **MS. JOHNSON:** This is an important scienter argument
10 as well, Your Honor. There is no allegation, absolutely
11 nothing, that would suggest that Twitter knew on July 26th or
12 July 31st that there was this user error. The Complaint
13 conflates -- sometimes it keeps them apart, sometimes it
14 conflates them with turning off the user setting and actually
15 solving the underlying software bugs.

16 It is contrary to the alleged facts in the Complaint that
17 for some reason, the executives knew about these bugs, sat on
18 them for days and days and days, to what end? Only to announce
19 them to users and to say at the same time, "We're committed to
20 honesty. We take responsibility. You trust us. We discovered
21 these, we Tweeted about them, and we are working to fix them."
22 Nothing contradicts those statements. Just an unsubstantiated
23 conclusion that hey, they must have known about these bugs at
24 the time they made their statements. It's absolutely missing
25 from the Complaint.

1 **THE COURT:** All right.

2 Where is your -- the best articulation of knowledge,
3 Ms. Weinrib? What part of the Complaint?

4 **MS. WEINRIB:** Well, Your Honor, there are multiple
5 allegations in the Complaint with regard to scienter, and I
6 will address them each in turn, but the first and probably most
7 important is that Defendants closely and regularly tracked key
8 metrics, which included an output --

9 **THE COURT:** Can you give me the paragraph number,
10 please.

11 **MS. WEINRIB:** Yes, Your Honor. Give me one moment.

12 There are multiple paragraphs. I apologize if my video
13 cut out. I'm looking at the paragraphs as we speak.

14 In paragraph 60, for an example, we talk about how Twitter
15 tracks metrics relating to its MAP advertisements. There are
16 various other paragraphs that discuss this as well, including
17 paragraph 61 and 62, 63.

18 But just to summarize these, Your Honor, the way that
19 advertisers buy space on Twitter is through a realtime bidding
20 auction, and there is an output from those auctions called
21 "cost per engagement" which demonstrates what advertiser demand
22 is at the time.

23 Now, Defendants admitted in their SEC filings that they
24 track these metrics closely, quoting, for example, their
25 filings -- and this is in the Complaint, and I'll direct you to

1 the paragraph number momentarily -- but they state they review
2 a number of metrics, and they talk about CPE specifically, "in
3 order to evaluate our business, measure our performance,
4 identify trends and so on."

5 Moreover, we have the -- we have sworn interrogatory
6 answers from Twitter in another action, *In re Twitter, Inc.*,
7 *Securities Litigation*, and those sworn interrogatory answers
8 provide that key metrics summary emails -- and, again, CPE was
9 identified as a key metrics -- as well as --

10 **THE COURT:** Slow down if you want your transcript to
11 have all your words.

12 **MS. WEINRIB:** Apologies. I do speak rather quickly.
13 I will try to slow down.

14 So the sworn interrogatory answers provide that key
15 metrics emails and other key financial information were
16 disseminated at least once a day to Twitter executives which
17 include the individual Defendants, Defendant Dorsey and the
18 company's CFO as well.

19 Moreover, as mentioned at the outset of the argument,
20 advertising revenue is a majority of Twitter's business. It's
21 a majority of their revenue, over 86 percent. So it's
22 something that Defendants clearly would have been focused on
23 throughout the quarter to see how the business is progressing
24 and how it's doing.

25 **THE COURT:** Response, Ms. Johnson.

1 **MS. JOHNSON:** This is implausible supposition upon
2 supposition, Your Honor. The allegations about focusing on
3 advertisement, the Complaint itself says that MAP is just one
4 of many advertising products. The Complaint itself says that
5 the CPE metrics do not break out MAP numbers individually.
6 They are unable to say that -- this is the -- this is the
7 corporate management's general awareness of day-to-day
8 workings. It does not establish scienter. These are
9 generalized reports that do not break out this individual
10 metric. And for counsel to reference the interrogatory
11 responses -- there is also a declaration in the paragraph that
12 she referenced --

13 **THE COURT:** Ms. Johnson, you are really cutting out.
14 Can you say that again?

15 **MS. JOHNSON:** Yes.

16 The paragraph that counsel referenced talks about an
17 interrogatory and also a declaration from a different case.
18 That declaration references the year 2015. That's before the
19 CFO was even at the company. It is not the same time period.
20 It only talks about daily metrics within a six-month period in
21 2015 at a time when Defendant Segal was not even at the
22 company.

23 And what those allegations even say, what that declaration
24 even says, is just CPE. The Complaint, paragraph 8/paragraph
25 137, admits that that is not specific to MAP but, rather,

1 involves all of the advertisement, and it's that generalized,
2 you know, *executives had access to reports that contained*
3 *numbers*, nothing specific, nothing particularized that could
4 even possibly contradict what the Defendants were saying.

5 **THE COURT:** All right. The next statement I have is
6 the generic statement from -- or the Sarbanes-Oxley
7 certifications. I take it that that rises and falls with the
8 analysis on the more specific? Would you agree, Ms. Weinrib?

9 **MS. WEINRIB:** Your Honor, yes. Our contention is that
10 the Sarbanes-Oxley certifications were false because the SEC
11 filings did contain untrue statements of material fact.

12 **THE COURT:** Let's move to the August 6th Tweet and
13 blog post. Where do we stand on this one, Ms. Johnson?

14 **MS. JOHNSON:** I would invite a comparison between that
15 August 6th Tweet and paragraph 91 which is the earnings call at
16 the end -- after the end of the class period. The CFO says,
17 "It turns out that a setting wasn't working as expected. We
18 were using device settings even if people had asked us not to,
19 so when we discovered that, we Tweeted about it, which is what
20 we often do to be transparent with people when things aren't
21 working as expected." And, two, "We turned off the setting so
22 that it would work as expected."

23 That true statement, according to Complaint, is the same
24 as the Tweet which said, "We discovered it, here's the Tweet,
25 we turned off the setting, and we take responsibility." There

1 is nothing that contradicts that Tweet in anything that
2 happened after the class period.

3 **THE COURT:** Ms. Weinrib.

4 **MS. WEINRIB:** Your Honor, that's actually not what the
5 Tweet said. The Tweet said that they discovered the software
6 bugs and fixed them. They never said anything about turning
7 off the setting and stopping the sharing of user data or what
8 impact that would have on Twitter's bottom line going forward,
9 and there was certainly impact, \$65 million worth of impact, in
10 2019 which continued into --

11 **THE COURT:** Hold on. Hold on. Let me make sure we're
12 talking about the same thing.

13 So with -- and let me also understand, with respect to the
14 August 6th Tweet, are you proceeding on an affirmative claim or
15 on an omission claim? The analysis is different depending on
16 each.

17 **MS. WEINRIB:** Your Honor, it's both. Firstly --

18 **THE COURT:** Let's deal with the affirmative.

19 So it says, "We recently discovered and fixed issues."
20 Are you arguing that that's false?

21 **MS. WEINRIB:** Yes, Your Honor. We're arguing that
22 they did not fix the issues. And that's directly related to
23 the omission, which is that --

24 **THE COURT:** Hold on. It says, "We fixed these issues
25 on August 5th, 2019." That's wrong?

1 **MS. WEINRIB:** We're saying that that's wrong and that
2 they were not able to fix the issue, and because they were not
3 able to fix the issue, they instead stopped sharing user data
4 altogether. They gave the -- the implication of the Tweet is
5 that they were able to resolve and fix the software bugs, and
6 we allege in the Complaint that they were not able to resolve
7 the software bugs, and because of that, they have to stop
8 sharing user data with measurement partners and advertisers
9 altogether which had revenue impact because it wasn't as
10 desirable of an advertising medium any longer without the
11 ability to send targeted ads to Twitter's users.

12 **THE COURT:** So with respect to the omission, it seems
13 to me a bit of a stretch to say that that opens the door with
14 respect to all the financial issues you're claiming.

15 **MS. WEINRIB:** Well, Your Honor, the omission here is
16 that because they could not fix the software bugs, they have to
17 turn off that setting. And turning off that setting is turning
18 off the life blood of the company's business. Without being
19 able to share their non-public user data with advertisers, the
20 advertisers don't want to spend as much money with Twitter
21 advertising because they can't effectively target the market
22 that they want to target without that information.

23 In fact, at the end of the class period, Your Honor,
24 Defendant Segal even admits that when you turn off that
25 setting, there is an impact to revenue. In fact, the quote is,

1 "There is some revenue impact when things like that happen,"
2 and he is referring to the turning off of data sharing, which
3 they had to do because of the software bugs, which also is a
4 further indication of scienter. They would have known there
5 would have been revenue impact as soon as they had to stop
6 sharing user data with advertisers and the measurement
7 partners.

8 **THE COURT:** Response.

9 **MS. JOHNSON:** All of that is entirely conclusory and
10 conflates the turning off of the setting with the fixing of the
11 bugs. The Complaint itself, paragraph 16/paragraph 114, the
12 Plaintiff claims the fundamental software bugs were not fixed,
13 and it was the user setting that was turned off. That's what
14 the Tweet says. "We recently discovered and fixed issues
15 related to" --

16 **THE COURT:** You, too, Ms. Johnson. Ms. Johnson, first
17 of all, you are very muted. Second of all, you are talking too
18 fast.

19 **MS. JOHNSON:** Okay.

20 **THE COURT:** Try again.

21 **MS. JOHNSON:** Let me start again.

22 The Tweet itself says, "We recently discovered and fixed
23 issues related to our settings choices." Plaintiffs' argument
24 conflates the issues with the settings choices with the
25 underlying fundamental software bugs. What Defendant Segal

1 said at the end of the class period is, "We turned off the
2 settings choices. We're still working on the bugs." That's
3 completely consistent with the Tweet, and there couldn't have
4 been revenue issues already. There is no allegation that
5 suggests that all the way back on August 6th at the beginning
6 of discovering this issue, Twitter could have possibly known
7 what revenue impact, if any, this change would have had. They
8 had just discovered it, and no allegation suggests that they
9 knew something more about either the bugs or the revenue issues
10 that ultimately happened at the end.

11 And I would just reiterate, Your Honor, that there was a
12 nine percent increase in revenue. The statements about revenue
13 gradually increasing were true, and nothing suggests that
14 anything that the Defendants said was contradicted.

15 **THE COURT:** Okay. The next one I have is September 4;
16 is that right?

17 **MS. WEINRIB:** Yes.

18 **THE COURT:** All right. Ms. Johnson.

19 **MS. JOHNSON:** Here again, if you go statement by
20 statement and compare it to what is alleged in the Complaint,
21 there is nothing that contradicts them.

22 "Our MAP work is ongoing." Nothing suggests that the MAP
23 work was not ongoing. "We continued to sell the existing MAP
24 product, but people know that a new one is coming, and we
25 haven't really talked about a timeline around it." Nothing

1 contradicts that Twitter continued to sell the existing MAP
2 product. Nothing contradicts that a new one is coming or that
3 there has never been a discussion. There, in fact, wasn't a
4 discussion about the timeline.

5 **THE COURT:** Okay.

6 Ms. Weinrib.

7 **MS. WEINRIB:** Your Honor, again, they state in -- on
8 September 4, just like they did on July 26th and July 31st,
9 that their work is ongoing, and they're referencing
10 improvements to MAP which were not ongoing.

11 Moreover, the September 4th statement also included
12 comments regarding the monetization strength of MAP in Asia.
13 Just a few short weeks later they admit that during the quarter
14 there was actually a precipitous decline in revenue from that.
15 And so those statements were misleading as well.

16 There is no indication there that there was any sort of
17 delay or stoppage to work on improving MAP and nothing to
18 suggest the precipitous decline that they admitted to a few
19 weeks later.

20 **MS. JOHNSON:** Counsel jumped to Statement 7. Perhaps
21 I should address that statement, Your Honor?

22 **THE COURT:** Go ahead.

23 **MS. JOHNSON:** What Statement 7 says about Asia is,
24 "But we do have some markets that have been more MAP focused.
25 Asia, for example, has tended be more MAP focused

1 historically." The word "historically" is right in there.
2 There is nothing to contradict that. In fact, once again, on
3 October 24th, Defendant Segal says, "Now MAP is a bigger part
4 of our business there in Japan than it is in other
5 geographies," and that statement is not alleged to be false.

6 These statements say nothing about revenue. They say
7 nothing about an upcoming impact. They are completely
8 historical and completely uncontradicted.

9 **MS. WEINRIB:** Your Honor, if I might respond to that
10 point?

11 **THE COURT:** Go ahead.

12 **MS. WEINRIB:** So, Your Honor, Defendants make this
13 point in their brief as well about how this is talking about
14 historical strength in Japan, but what they omit to say is that
15 Defendants provided that information in response to an
16 analyst's question regarding current strength in Asia. And
17 their response to the question regarding current strength in
18 Asia was to talk about how historically MAP has been strong in
19 Asia, when the truth is that it was no longer strong in Asia
20 and that, as mentioned when they disclosed -- when they issued
21 their corrected disclosure a few weeks later, in fact the
22 current strength in Asia did not match historical strength, and
23 there had been a precipitous decline, which there was no
24 indication of in their September 4th statement.

25 **THE COURT:** All right. Let's move to scienter and the

1 core operations theory.

2 Ms. Johnson.

3 **MS. JOHNSON:** Yes. Core operations, of course that
4 exceedingly rare category of cases. The actual -- actual
5 revenue impact, as counsel just referenced, was allegedly
6 65 million for the full year of 2019. That is less than 2.2
7 percent of Twitter's total revenues in 2018. That is far -- a
8 far cry from the level that it needs to be to suggest that it's
9 absurd that the Defendants didn't know. In fact, it is
10 miniscule, and the Complaint contains hyperbole about a massive
11 impact or a huge decline.

12 The actual impact was to revenue growth. The statement
13 said revenue will continue to gradually grow. Revenues grew.
14 At third quarter results that were announced on October 23rd,
15 they grew by nine percent year over year. That is with this
16 impact. So growing less, which is Plaintiffs' allegation, at a
17 2.2 percent alleged impact from all of these issues worldwide
18 is a far cry from that exceedingly rare category of cases where
19 it would be absurd to suggest that the Defendants didn't know.

20 **THE COURT:** Ms. Weinrib.

21 **MS. WEINRIB:** Your Honor, the core operations doctrine
22 does not depend on the amount of the loss. It depends on
23 whether it is a core operation of the business. And
24 advertising is certainly the core operation of Twitter's
25 business, as it earned 86 percent of its revenues in the last

1 few years from advertising alone. So any change that affects
2 their advertising revenue -- and though they state at the end
3 of the class period that the software bugs primarily impacted
4 MAP, it impacted other products as well.

5 Whether or not this was an impact to revenue growth or
6 whether it caused an actual loss is beside the point. The
7 point is that Defendants issued misleading statements regarding
8 their work on MAP, regarding their fixes to software bugs that
9 never happened, regarding their inability to share user data
10 with advertisers, the lifeblood of their business, and that
11 this misled investors, and that when the truth came out in
12 October of 2019, stock dropped.

13 What Defense counsel refers to is not what the definition
14 of the core operations theory is.

15 **THE COURT:** Okay. What else do you want to say,
16 Ms. Weinrib?

17 **MS. WEINRIB:** Your Honor, just going back for a
18 moment, Defense counsel referenced the interrogatory answers
19 and suggested that this was outdated information, but the fact
20 of the matter is that during the class period itself,
21 Defendants stated in their SEC filing that they monitored these
22 same metrics that are referenced in the interrogatory answers.
23 So while that may have been pre-class period, there is
24 inter-class period information that corroborates it and
25 suggests that that monitoring continued. And access to key

1 reports and information demonstrates the answer in the Ninth
2 Circuit.

3 And, again, we have Defendant Segal's admission at the end
4 of the class period that when you stop using that setting, when
5 you stop sharing non-public data with advertisers, there is
6 revenue impact when things like that happen. The last part of
7 that statement that I just said is a direct quote from
8 Defendant Segal: "There is some revenue impact when things
9 like that happen." They were aware.

10 But in addition to their access to information and their
11 knowledge that turning off that setting would have revenue
12 impact, there are additional indications of scienter. For
13 example, we have the fact that Defendants admittedly focused on
14 MAP. They repeatedly talked about MAP both before and during
15 the class period, answering analyst questions about it,
16 conveying their knowledge about MAP. We have Confidential
17 Informant 1, as well as the Nirenberg declaration, that
18 demonstrate the importance of MAP to Twitter overall. We have
19 Confidential Informant 1 also providing information about how
20 software bugs like this are fundamental errors that take
21 minimum three to six months to isolate and fix.

22 And speaking of bugs, we also have Defendants' focus on
23 similar bugs. A few months before the class period in May
24 2019, Defendants disclosed that there were similar bugs that
25 likewise caused Twitter to share non-public information -- and

1 in this case it was location information about its users --
2 with advertisers even when those users had opted out of having
3 that shared. And they admitted that this issue had started at
4 least in May of 2018, a full year before. And they also
5 conveyed to the public that they were focused on making sure
6 that this didn't happen again, that there would be no
7 further --

8 **THE COURT:** Can you give me the characteristics of
9 Confidential Witness No. 1; that is, how do they have personal
10 knowledge of how long it takes to fix bugs?

11 **MS. WEINRIB:** Your Honor, Confidential Informant 1 was
12 an ad ops specialist.

13 **THE COURT:** Was what?

14 **MS. WEINRIB:** An ad ops specialist, advertising
15 operations specialist.

16 **THE COURT:** Was the person a software engineer?

17 **MS. WEINRIB:** I'm sorry. Excuse me, Your Honor?

18 **THE COURT:** Was the person a software engineering?

19 **MS. WEINRIB:** I'm not sure if the advertising ops
20 specialist description is equivalent to software engineer, but
21 he worked directly with Twitter's advertising customers and had
22 direct knowledge of the MAP product.

23 **THE COURT:** So I take it that that person's never
24 fixed any software bugs?

25 **MS. WEINRIB:** Your Honor, we don't have that

1 information at our disposal, but this individual worked -- was
2 an -- was an advertising operations specialist and had intimate
3 knowledge of the MAP product and understood what it would take
4 to fix software bugs that impacted that product and worked in
5 that area for Twitter for a number of years.

6 **THE COURT:** All right.

7 Any response, Ms. Johnson?

8 **MS. JOHNSON:** Briefly on Confidential Informant 1, ad
9 ops was never defined. He or she worked from 2014 to 2018, and
10 thus has no basis for any knowledge about what happened. But
11 more to the point, the series of illogical inferences that
12 Plaintiffs' argument relies on, it doesn't -- it doesn't make
13 sense. The central theory is that somehow they knew about
14 these bugs. Nothing tells us how. They sat on them. Nothing
15 tells us why. And then they disclosed the bugs together with
16 their commitment to user privacy in a statement that the
17 Plaintiffs don't contradict.

18 So the bottom line is there were these issues. They were
19 fixed. And Plaintiff is trying to turn it into securities
20 fraud without the particularity required by the PSLRA.

21 **THE COURT:** Okay. I will take it under submission,
22 and I will be in touch in writing.

23 **MS. JOHNSON:** Thank you, Your Honor.

24 **MS. WEINRIB:** Thank you, Your Honor.

25 (Proceedings adjourned at 4:04 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Thursday, November 19, 2020

Pamela Batalo Hebel

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter